

1 But even in case it goes haywire if you stand up  
2 and say we -- staff has a revised recommendation that we  
3 agree with, and staff says they agree with it, and the  
4 Board starts making motions, that's the same situation.

5 MR. MICHAELS: Yeah.

6 MR. THOMPSON: Ken Thompson from Valuation.  
7 Just to clarify this, we don't have a nonappearance  
8 calendar in December, so there's always -- if it's pulled  
9 off the nonappearance, first of all, it has to be pulled;  
10 the Board cannot make a decision on the nonappearance  
11 calendar. Is that correct, Debbie?

12 MS. MANDEL: If it's on an adjudicable --

13 MS. PELLEGRINI: If it's on consent calendar.

14 MR. THOMPSON: If it's on consent calendar,  
15 that's what I'm saying. It can only stay --

16 (Indistinguishable simultaneous multiple  
17 voices.)

18 MR. THOMPSON: But as a practical matter if it's  
19 on consent, the Board has to pull it because nothing's  
20 been noticed or the disclosures haven't been filed.

21 MS. MANDEL: Correct. But if it's on an  
22 adjudicatory calendar, then the Board can do whatever.  
23 And if there's a taxpayer who has had substantive  
24 discussions with a Board member which presumably, if  
25 there's a taxpayer who is worried, they might have

1 contacted Board members, then it winds up on an  
2 adjudicatory calendar, and you do have all of that.

3 But you're correct, the consent calendars would  
4 not have the contribution disclosures and can only be  
5 voted on in a single vote without a separate item. So  
6 discussion on any particular item. Someone would have to  
7 pull off consent, and then you would blow that December  
8 31 statutory deadline unless the Board decided that very  
9 moment to schedule another Board meeting before the end  
10 of the year to deal with the item. But that would --

11 MR. THOMPSON: -- be unusual.

12 MS. MANDEL: Boy, talk about confusion in the  
13 boardroom.

14 MS. RUWART: We will address the comment as we  
15 are addressing all comments, but we believe this states  
16 existing law.

17 MR. DOERR: Dave Doerr. Why not try and  
18 calendar these appeals for November?

19 MS. PELLEGRINI: We actually try to calendar as  
20 many as we can in October and November, and have as few  
21 as possible in December. It's not happening this year,  
22 but we tried.

23 Okay, we are going to go for a few more minutes,  
24 then I'm going to call a break. So 3151, Prehearing  
25 Conference.

1           MR. MICHAELS: Well, there's one other comment,  
2     pardon me, Debbie, but the same comment applies, I think,  
3     to 3151 as to 3150. It would seem, and we've had some  
4     not so good experiences in the past where it took a while  
5     for us to get a recommendation or some other writing from  
6     the Board that directly affects an upcoming hearing. Be  
7     nice for there to be some kind of guidance as to sending  
8     it in advance. I put this throughout actually, you know,  
9     within two business days of receipt, or some such.

10           MS. RUWART: We will address those, and we'll  
11     see if there are places where it would be appropriate to  
12     put a timely deadline in there. But in my view, as we  
13     all know, the state assessee process is so time crunched  
14     that everybody is making the best effort to get  
15     everything out as timely as possible. And to put  
16     regulatory requirements in there really doesn't make any  
17     good sense. We are all attempting to do so.

18           And what we should all be doing is, instead of  
19     putting regulatory requirements in, we should be  
20     investing our effort in streamlining our internal  
21     processes to fulfill the goal that we all are actually  
22     trying to do, which is get things out as quickly as  
23     possible. That would be my view. It doesn't do any good  
24     to say that Board Proceedings blew the two-day deadline.  
25     Well, what is your remedy? It just puts too much into it

1 I think.

2 MR. MICHAELS: Okay.

3 MS. RUWART: That would be my opinion.

4 MR. MICHAELS: Well, I accept that for 3150  
5 possibly, but, I mean, the next one which we haven't  
6 reached yet, I probably have a different view, though.

7 MS. RUWART: And so if nobody has any more  
8 comments on 3150, this would be a good -- this will be  
9 our last discussion topic before we take a break. As I  
10 mentioned before, we should -- let's discuss the existing  
11 provision, and I would also like to discuss this idea  
12 coming forth about having an actual appeals conference as  
13 well.

14 The current provision, as you can see,  
15 contemplates that the -- codifies existing practice, that  
16 the petitioner and the Valuation Division get together.  
17 We call it in the regulations a prehearing conference.  
18 Everybody knows that it's a continuing back and forth,  
19 lot of dialogue in many cases, to exchange the relevant  
20 information, identify the issues, attempt to resolve  
21 issues as much as possible. And then the Appeals  
22 Division, as mentioned previously, takes all the  
23 documentation and information and writes up a hearing  
24 summary for the Board members, which is then distributed  
25 to both petitioner and the Valuation Division prior to an

1 oral hearing.

2 Maybe in the interests of orderliness, let's  
3 talk about this particular provision and then talk about  
4 what if we changed the whole -- if we added this extra  
5 conference to the whole process. Mr. Michaels? Anybody  
6 else?

7 MR. MICHAELS: Fair enough. Anybody else?

8 My fundamental concern here is that at a certain  
9 point it's too late, probably, to have a prehearing  
10 conference. It wouldn't make a heck of a lot of sense I  
11 don't think to have a prehearing conference the day  
12 before the hearing.

13 MS. RUWART: Well --

14 MR. MICHAELS: And so I respect what you said a  
15 moment ago about not handcuffing the Proceedings Division  
16 on issuing a recommendation, but for it to be meaningful,  
17 these petitioners typically are out of state, or often,  
18 many times are out of state. And it's, you know, an  
19 effort to come to -- an expense and otherwise -- an  
20 effort to prepare for and attend a prehearing conference.  
21 So I think there should be some window there that gets  
22 closed at a certain point, if you're within five days or  
23 some reasonable period of time, it's just not going to  
24 happen.

25 MS. RUWART: Okay.

1 MS. STANISLAUS: Selvi from Legal. As far as  
2 being here physically present, Peter, it doesn't happen  
3 to all other of these conferences; you can have a phone  
4 conference, you can have a video conference. You don't  
5 have to be physically present here at the BOE.

6 MS. RUWART: Okay, just --

7 MR. MICHAELS: Okay.

8 MS. RUWART: Go ahead.

9 MR. HUDSON: Tom Hudson, Bill Leonard's office.  
10 Bill Leonard had brought up the issue, too, of some  
11 guidance on this, our new Appeals Division conference,  
12 you know. I'm not even sure precisely what we would want  
13 to say about that, but it would be good to have some  
14 guidance to taxpayers about how they could request one.

15 It doesn't even have to be that the conference  
16 is mandatory under any circumstances. But taxpayers who  
17 want to know how they could go about requesting one or  
18 explaining why their circumstances are extraordinary, it  
19 would be helpful.

20 MS. RUWART: And as I attempted to explain,  
21 maybe not very clearly, that would be a whole new  
22 provision. Because as this 3151 contemplates, and maybe  
23 by taking existing language, maybe these rules do a  
24 disservice, because this -- while it says this is a  
25 prehearing conference between the petitioner and

1 Valuation Division, I don't think the petitioners want to  
2 be foreclosed from meeting with the Valuation Division  
3 even up to the moment of the hearing.

4 MR. MICHAELS: You're absolutely correct about  
5 that.

6 MS. RUWART: So that's why I would actually not  
7 be inclined to put something in there. Maybe what is  
8 better is to maybe explain that a prehearing conference  
9 is -- that the petitioner is not limited to a conference  
10 and that we do contemplate almost an ongoing -- it can be  
11 an ongoing exchange of information, which is what really  
12 happens.

13 And if I were asked to apply this terminology to  
14 what actually happens, the prehearing conference is  
15 probably the first meeting between the petitioner and the  
16 Valuation Division, and it goes from there. So I can see  
17 where that would be -- this would -- I think in all cases  
18 I think this section needs to be retained, maybe fleshed  
19 out a little.

20 What I'm really interested -- and also with no  
21 dates, because you want to keep communication going all  
22 the way up to the hearing date. But I'm very curious if  
23 anybody has ideas off the top of their head or later  
24 wants to give comments on if there were an actual appeals  
25 conference with an Appeals Division attorney presiding,

1 with both Valuation Division and petitioner present  
2 either live and in person or remotely, what procedures  
3 would people want to see?

4           Already at staff level we see two potential  
5 limitations because of the time frame, the compressed  
6 time frame. One limitation would be that the petitioner  
7 may be required to be put on a hearing date as prescribed  
8 by Board Proceedings Division without a lot of choice.  
9 You may not be able to pick an appeals conference and go  
10 in October. Also, the petitioner may also be asked  
11 therefore to waive the regulatory 45-day notice of  
12 hearing. The statute only requires 10 working days. We  
13 may have to --

14           MS. MANDEL: Oh, yeah, I remember when we used  
15 to get those.

16           MS. RUWART: And obviously because they would be  
17 in the process of requesting and holding an actual  
18 appeals conference, we would know that this is going on.  
19 Those are two issues that staff sees at the moment to be  
20 procedurally -- to keep things moving along if you want  
21 to put that extra step in there.

22           So if anybody has any ideas about requesting --  
23 as Tom said, requesting a conference, how we can make it  
24 work time-wise for everybody, either now or in -- as a  
25 follow-up, we would appreciate that, because I think we



1 would like to put a provision in there about that.

2 Any comments? Just yes, okay.

3 MS. PELLEGRINI: Okay, with that, we will be  
4 taking a 10-minute break.

5 MR. SHAH: Carole, this is Neil.

6 MS. RUWART: Yes, Neil.

7 MR. SHAH: I'm sorry to ask for this at this  
8 late time, but, you know, the matrix that Peter has  
9 marked up, I don't have that.

10 MS. RUWART: Oh, dear. I'm so sorry. We have a  
11 break; I will go and e-mail it to you right now.

12 MR. SHAH: Really appreciate it.

13 MS. RUWART: Does anyone else online want it?

14 MS. CROCETTE: Carole, that would be the same  
15 for Sabina and Tonya.

16 MS. RUWART: Okay. And Jim?

17 MR. HERD: Yeah.

18 MS. RUWART: Maybe not, whatever.

19 MR. SHAH: And real quick, Carole, are you -- on  
20 the prehearing conference, are you going to have that  
21 plus this formal appeals conference you're talking about?

22 MS. RUWART: Yes. If the question was, are we  
23 going to have the prehearing conference in 3151 and the  
24 appeals conference?

25 MR. SHAH: Right.

1 MS. RUWART: The prehearing conference, Section  
2 3151, is existing practice and codifies the communication  
3 between the Valuation Division and petitioner. That  
4 always has been and always will be.

5 Currently, the Appeals Division only does a  
6 review on the briefs and doesn't hold a formal appeals  
7 conference. We're considering adding the ability for the  
8 petitioner to request a live appeals conference,  
9 essentially.

10 MR. SHAH: Got you.

11 MS. RUWART: So that would be two different --  
12 and that appeals conference would have both the  
13 petitioner and the Valuation Division present similar to  
14 how you run a Business Tax appeals conference.

15 MR. SHAH: Sounds good. Thanks.

16 MS. PELLEGRINI: We are now giving the court  
17 reporter a 10-minute break.

18 MS. RUWART: Okay, and I'll e-mail that stuff to  
19 you right now.

20 (A brief recess was taken.)

21 MS. PELLEGRINI: We're beginning again and  
22 starting on page 9, okay, Section 3160, Oral Hearings -  
23 Briefs. Comments?

24 MR. MICHAELS: Well, Peter Michaels, and I think  
25 this is probably just -- for Carole -- I had raised the

1 question in (a) as to whether Tax and Fees Program  
2 Division is serving as counsel for the Valuation  
3 Division. And I think the answer is yes.

4 MS. RUWART: Yeah, it is "yes."

5 MR. MICHAELS: And if that's the case and the  
6 Tax and Fees Program Division is an advocate for one of  
7 the parties rather than a neutral, it seems to me that in  
8 (b) it would be inappropriate to include a so-called  
9 recommendation, just as inappropriate as it would be to  
10 include a petitioner's recommendation. And you see I  
11 have stricken those last words there, for the reasons I  
12 think I just explained. The recommended action to be  
13 taken by the Board on each issue. Well, of course an  
14 advocate is going to say whatever his or her position is.

15 MS. RUWART: Okay, got it.

16 MS. PELLEGRINI: Other comments? Yes.

17 MR. RUBIN: Bob Rubin. And this is -- I've got  
18 a concern about petitioner having 13 days to file a reply  
19 brief.

20 (Phone noise.)

21 MS. PELLEGRINI: Somebody has just entered on  
22 the phone. Can you please identify yourself?

23 MR. LoFASO: Sure, Alan LoFaso with Betty Yee's  
24 office.

25 MS. PELLEGRINI: Thank you.

1 Please continue.

2 MR. RUBIN: And this is more of a general  
3 comment, because as I understand the time --

4 (Phone noise.)

5 MS. PELLEGRINI: Whoever has just come on the  
6 phone --

7 MR. SMITH: Chris Smith from Betty Yee's office.

8 MS. PELLEGRINI: Thank you.

9 MR. RUBIN: The time line is the same for all  
10 the different appeals. And I don't do very much that has  
11 to do with property, so maybe 20 days is fine, but -- or  
12 actually 13 days. But in the -- you know, in an appeal  
13 of an FTB case, you get 30 days to a file a reply brief,  
14 and, you know, it might just be -- you might not always  
15 have time with your other work to be able to turn around  
16 and do a reply brief in 13 days.

17 MS. RUWART: I believe I can address that. The  
18 state assessee petition and hearing process is  
19 constitutionally mandated that the Board -- and  
20 statutorily mandated -- that the Board must decide these  
21 values by the end of every year, and there is a specific  
22 time line that is the same every year. You must file  
23 your property statement by March 1st; the Board must set  
24 its initial values no later than June 1st; you must file  
25 your petition by July 20th; and, the Board must adopt a

1 value no later than December 31st.

2 So we understand that this, to the  
3 nonparticipant, looks pretty short. It has to be that  
4 way, and everybody works with it. What we have done is  
5 we have, prior to -- if you look at the existing  
6 regulations, you see that there was a 45 day prior to the  
7 hearing date brief, or a different date.

8 But what we've done is we've now had to  
9 accommodate the fact that the Appeals Division needs a  
10 certain amount of time to look at both the Valuation  
11 Division's brief and the petitioner's petition and reply  
12 brief and to create a neutral summary to advise the  
13 Board.

14 In order to do that, we've pushed the dates  
15 around a bit. It does not give the petitioners any less  
16 time than they had previously to respond. And I think  
17 the reality is that people who work in this field, they  
18 just know that it's the season, and that's kind of how  
19 you -- that's certainly how we do in Legal and in  
20 Valuation. But it's a good question.

21 MR. MICHAELS: Yeah, if I could just amplify  
22 slightly. For one, I agree with what you said, and it  
23 'tis the season, and it's all compressed and we have very  
24 little flexibility there.

25 MR. KOCH: Very little sleep.

1 MR. MICHAELS: What's that?

2 MR. KOCH: Sleep, I said.

3 MR. MICHAELS: That all said, I think Bob's  
4 point is an important point if we go to -- it's on the  
5 next page, so maybe I should just wait my turn with it,  
6 but (f) here, refers to (c) and (d) and (e). Bob was  
7 just talking about (d).

8 Personally, I don't have a problem with the 20  
9 days being in there, and I don't have a problem with the  
10 Chief of the Proceedings Division either giving the  
11 Valuation Division extra time if they need more time or  
12 giving the petitioner more time if the petitioner needs  
13 more time.

14 But I do have a problem when that final  
15 countdown is on and we're within 10 days of a hearing,  
16 giving the Appeals Division more time, because that's an  
17 invitation for us, all of us, Valuation side and the  
18 petitioner's side, to end up receiving an analysis the  
19 night before the hearing. And I certainly think we  
20 should be afforded an opportunity to analyze their  
21 analysis. So my suggestion is that we stick with  
22 inclusion of (c) and (d), in (f), but remove (e) from  
23 (f).

24 MS. MANDEL: And that means that if you're going  
25 to have an appeals conference, that you must -- and

1 assuming, you know, everything shows up, the filing date  
2 instead of, you know, mailed and gets to Sacramento five  
3 days later, but assuming they have everything on the  
4 actual 20 days before, that within 10 days of that reply  
5 brief filing deadline, you must hold an appeals  
6 conference, and the appeals conferee must write up his  
7 stuff or her stuff.

8 MS. PELLEGRINI: And this is Debbie. I think  
9 that is in there because if I was to grant it in (c), I  
10 may end up needing to push (d) and then (e), each date  
11 subsequently. And it gives me that ability to do so,  
12 which is what tends to happen in the Business Tax briefs.  
13 If the first party wants a little extra time, it's not  
14 fair that I compress the next one.

15 But I agree with you that, yes, we're not  
16 looking at going to the night before. But I think that  
17 maybe --

18 MR. MICHAELS: Well, maybe we need at least  
19 seven days, you know, or something where there is some --  
20 or where you have a window that goes down.

21 MS. MANDEL: I can assure you, at least out of  
22 our office, and I imagine the other Board member offices  
23 feel the same, we don't care to get them the day before  
24 the hearing either.

25 MR. KAMP: No, certainly not.

1 MS. RUWART: No.

2 MS. PELLEGRINI: Suggestion taken. Okay, any  
3 other comments? We were on page 9, but we'll extend it  
4 over the rest of this section on page 10.

5 MR. SHAH: Hi, this is Neil. Carole?

6 MS. RUWART: Yes, Neil.

7 MR. SHAH: Carole?

8 MS. RUWART: Hi.

9 MR. SHAH: Are you there?

10 MS. RUWART: Yeah, can you hear me?

11 MR. SHAH: Yeah. Just a quick question on the  
12 appeals summary that's going out to the Board members'  
13 staff.

14 MS. RUWART: Yes.

15 MR. SHAH: That's the one that's coming out 10  
16 days prior to the Board meeting?

17 MS. RUWART: Correct.

18 MR. SHAH: And is that the one that -- is that  
19 sent out to the taxpayer, too?

20 MS. STANISLAUS: Yes.

21 MS. RUWART: Yes, and to Valuation Division.  
22 Maybe Debbie, too.

23 MS. PELLEGRINI: Selvi spoke there.

24 MS. RUWART: Sorry, go ahead, Selvi, if you  
25 would explain, that would be great.



1 MS. STANISLAUS: Yes, Neil, it goes to everyone;  
2 it goes to the Valuation Division, it goes to the  
3 petitioners, and it goes out to everyone, and the Board  
4 members, too.

5 MR. SHAH: Okay. And in case of an oral  
6 hearing, it's in the format that's listed in (e)?

7 MS. STANISLAUS: No. That's something that we  
8 need to work on.

9 MR. SHAH: So that would be the factual issues  
10 and the background and the contentions and the law --

11 MS. PELLEGRINI: Neil, please repeat what you  
12 said.

13 MR. SHAH: I was just going to ask because this  
14 time around we had some confusion at this Board hearing,  
15 the November 15th Board hearing, so I'm just trying to  
16 clarify the format that's coming out as far as the  
17 summary that we get, that the Board member staff get, if  
18 there's going to be an oral hearing versus if it's just a  
19 waived appearance.

20 MS. STANISLAUS: Okay, if it's an oral hearing,  
21 then it's going to be a hearing summary format after the  
22 Franchise Tax Board hearing --

23 MR. SHAH: Okay.

24 MS. STANISLAUS: -- which you know.

25 MR. SHAH: Right. That's perfect.

1 MS. STANISLAUS: But if it's a waived  
2 appearance, and that was the confusion that came up this  
3 time with Broadwing and Alpine and ICG. It should not be  
4 a hearing summary; it should be a summary of  
5 recommendation by Appeals stating that it's now a waived  
6 appearance.

7 MR. SHAH: Now, subsequently if the oral hearing  
8 becomes a waived appearance, do you then send out a  
9 summary decision?

10 MS. STANISLAUS: That's what we did this time,  
11 but that's something we need to talk about in December.  
12 We just need to streamline the process, Neil.

13 MR. SHAH: Right, because it was getting  
14 confusing, because the Valuation Division was also  
15 sending out a summary.

16 MS. STANISLAUS: The Valuation Division? No.  
17 We always do the brief.

18 MR. SHAH: Right. Then they sent out a second  
19 brief saying, okay, this is what we're agreeing to now.

20 MS. STANISLAUS: Okay. Let me go back and check  
21 on that.

22 MR. JACKSON: This is Don Jackson. That was  
23 Alpine?

24 MR. SHAH: Right.

25 MR. JACKSON: And the Alpine was because it was

1 still actually an oral hearing at the time that we were  
2 revising that.

3 MR. SHAH: And you're going to continue that,  
4 then?

5 MR. JACKSON: That's what I think they are going  
6 to talk about. But at the time when we sent it out, it  
7 was an oral hearing, and we were sending out a revised  
8 brief for Valuation Division; that was coming out of Val.  
9 It was not a waived appearance at the time, but they were  
10 -- ultimately, they coincided when -- ultimately. So it  
11 looked like the other ones, the ICG and the Broadwing  
12 sort of looked like that.

13 MS. STANISLAUS: But it was still a revised  
14 brief, it was not a hearing summary that came out from  
15 Valuation. But that is something, Neil, we need to talk  
16 about in December.

17 MR. SHAH: It would be better if Appeals could  
18 streamline all of that and just send out a summary from  
19 Appeals rather than us getting -- you know, it's up to,  
20 you know, the other interested parties also. But from my  
21 perspective, I'd be interested in getting one summary  
22 from Appeals telling us what's going on rather than  
23 multiple ones and we're trying to figure out where we  
24 are.

25 MS. MANDEL: Yeah, I think it was just confusing

1 in that case, Neil, because the taxpayer had not yet  
2 waived appearance, and so Val, Valuation Division felt  
3 compelled to revise their brief to reflect their current  
4 understanding of the case and the issues so that they had  
5 a brief on file. And then I guess the waived appearance  
6 came in later. But, yeah, when you get three different  
7 documents, it's a little confusing.

8 MR. SHAH: Right, because then you're trying to  
9 compare all the documents saying, okay, where are the  
10 changes and what's happening here. Frequently in  
11 Business Taxes, they'll send out a little e-mail, they'll  
12 send out a little blurb saying what the changes are or  
13 why it's been sent out.

14 MS. MANDEL: Yeah, it's always nice if they say  
15 here's the revised thing and here's what the change is.

16 MR. SHAH: Right.

17 MS. PELLEGRINI: Neil, we will, as Selvi said,  
18 have a meeting before we start going through the same  
19 process for December.

20 MR. SHAH: Sounds good, thanks.

21 MS. PELLEGRINI: Any other comments on 3160,  
22 oral hearing briefs on page 9 and 10?

23 MR. MICHAELS: Well, Peter Michaels speaking.  
24 The very last sentence here, I guess it's part of (g),  
25 says, "The case will remain on the agenda ...." And I

1 think that could possibly be clarified, but maybe that  
2 would confuse things; maybe agenda is sufficient. There  
3 are a lot of different components to an agenda: consent,  
4 appearance, nonappearance.

5 MS. RUWART: There's definitely -- this is  
6 Carole Ruwart -- there was definitely a lot of discussion  
7 when I was pulling from all the different sources to put  
8 this together, as to how much detail we wanted to put in  
9 a regulation versus giving the Board flexibility to  
10 organize its business of conducting meetings and just  
11 generally, or, you know, that there -- in fact, a lot of  
12 the things we were just talking about, you know, could be  
13 considered internal procedures that you could argue  
14 whether they should or shouldn't be in a regulation  
15 versus in a procedural manual versus just a process.

16 So I will -- what I would like to do is consider  
17 that, but if we go the route that you're talking about,  
18 then we probably want to do a pretty comprehensive  
19 stating of which kind of matters go on which parts of the  
20 agenda. That may or may not be a good idea when we see  
21 it all in writing.

22 MR. MICHAELS: As a matter of practice, if there  
23 would be a complete resolution, is there a reason for it  
24 to be on the appearance calendar?

25 MS. RUWART: Well, I don't know.

1 MR. MICHAELS: Not necessarily? Carole,  
2 anybody?

3 MS. MANDEL: Could be. I mean, we had three  
4 cases that because they were noticed for hearing and --  
5 on the public agenda and subsequently were --

6 MR. SHAH: It's 10 days, right, you need 10  
7 days?

8 MS. MANDEL: Right. They stayed on the agenda  
9 because they were publicly noticed, but they were  
10 appearance waived.

11 MS. RUWART: Right, anything that occurs.

12 MS. PELLEGRINI: If the Board -- if anytime the  
13 value has changed from May, the Board is the only one  
14 that can decide that. Therefore, it has to stay on the  
15 calendar. Those are removed when somebody just withdraws  
16 their petition. So anything else has to stay.

17 MR. MICHAELS: What about appearance versus  
18 nonappearance?

19 MS. PELLEGRINI: That all becomes, once it's  
20 been noticed at the 10-day mark, we keep it on whatever  
21 calendar it's on.

22 MS. MANDEL: I guess the question is, this  
23 sentence, "The case will remain on the agenda for Board  
24 action," was that sentence put in here in (g) so that  
25 people who resolved their cases will realize if they've

1 never done state assessment, what Debbie just said, which  
2 is, just because you resolved it with staff does not mean  
3 it's going away. It will be on a Board agenda for a  
4 Board decision. And --

5 MR. MICHAELS: And maybe rejected.

6 MS. MANDEL: And maybe rejected, like it said in  
7 the other rule.

8 MS. RUWART: I think that would probably be a  
9 primary benefit of having that sentence in the regulation  
10 as it stands.

11 MS. PELLEGRINI: Any other comments on this  
12 part?

13 We will then move to 3161, Oral Hearings -  
14 Scheduling of Hearings. Page 10.

15 MR. MICHAELS: Peter Michaels speaking here.  
16 And maybe, Carole, I should just ask you, I added a  
17 subparagraph or a paragraph there because it looked to me  
18 as if the language that I have after (c) --

19 MS. RUWART: Yes.

20 MR. MICHAELS: -- was not intended to be limited  
21 to private railroad car values but rather to apply  
22 generally to escape assessments.

23 MS. RUWART: That could well be. Let me see.

24 MR. THOMPSON: This is Ken Thompson, Valuation  
25 Division. Actually, that is not intended to apply to

1 escape assessments, only private car assessments.

2 MS. RUWART: Yeah, the --

3 MR. MICHAELS: "If the assessment was made  
4 outside the regular assessment period, the Board shall  
5 hear the petition within 90 days of the date on which the  
6 petition was filed and render its decision within 45 days  
7 of the date of the hearing on the petition."

8 MR. THOMPSON: Actually, that's intended for  
9 private cars only.

10 MR. MICHAELS: Private railroad cars.

11 MS. RUWART: That's it, then.

12 MR. MICHAELS: Okay, very good.

13 MR. THOMPSON: And actually staff has a problem  
14 with the 90 days, because sometimes we have Board  
15 meetings, even though we're having one a month, they can  
16 be 59 days apart. We really need to kick that out to 120  
17 days, if we are going to keep this in a rule.

18 MS. MANDEL: Is that a statutory 90-day  
19 requirement, though?

20 MS. RUWART: Yes.

21 MR. THOMPSON: It is statutory?

22 MS. RUWART: It is. I'm going to quote it to  
23 you in a second. Revenue Taxation Code Section 11339(d)  
24 -- well, (a) says, "Any assessment made outside of the  
25 regular assessment period ..." --



1 MR. MICHAELS: Private railroad cars we're  
2 talking about?

3 MS. RUWART: Private rail cars only. "A  
4 petition for reassessment may be filed on or before the  
5 50th day following the date of the notice of assessment."  
6 And in (d) it says, "The Board shall hear the applicant  
7 on the petition within 90 days of the date on which the  
8 petition was filed."

9 MS. MANDEL: And then there's a deadline on  
10 deciding, presumably, a statutory deadline? Because  
11 that's an unusual provision.

12 MS. RUWART: Yes, 11341(a), "The Board shall  
13 render its decision on the petition for reassessment  
14 within 45 days of the date of the hearing on the petition  
15 ...."

16 MS. MANDEL: Right.

17 MR. THOMPSON: It may be moot since the law  
18 changed on private cars in 1995. Petitions have been  
19 very few and very simple. So ...

20 MR. MICHAELS: Well, my reason for raising it,  
21 I'm now glad that I did, is that if this second and --  
22 second sentence there applies to private rail cars, then  
23 I think we have a problem, because there's not a  
24 recognition here that an escape assessment does not have  
25 to be decided in the calendar year in which the

1 assessment was issued, if you read (a) with an escape  
2 assessment in mind.

3 And this 3161 appears to be otherwise silent  
4 about escape assessments. So let's read it, "The Board  
5 shall hear petitions for reassessment of unitary or  
6 nonunitary values and correction," blah, blah, blah, "by  
7 December 31 of the year in which the notice was issued  
8 and render its decisions no later than December 31 that  
9 year."

10 So hypothetically a company -- a taxpayer gets a  
11 notice of assessment on November 16th, after the Board,  
12 on the 15th, approved issuance of that escape assessment,  
13 and the decision has to be made by December 31st?

14 MS. RUWART: There's been --

15 MR. MICHAELS: It's not going to happen.

16 MS. RUWART: Peter, there's been an omission of  
17 the escape assessment scheduling. I will put it in.

18 MR. MICHAELS: Okay.

19 MS. RUWART: And so we'll have (a) being the  
20 regular petitions for reassessment of unitary, nonunitary  
21 value. (b), I will make more clear applies to -- the  
22 entire subdivision applies to private railroad cars. And  
23 instead of putting your (c) paragraph right where you put  
24 it, I'll put (c) in below as the escape assessment  
25 provisions.

1 MR. MICHAELS: Thank you. Perfect, great.

2 MR. THOMPSON: Ken Thompson from Valuation. But  
3 there is no equivalent statutory language in unitary  
4 assessment for unitary escapes.

5 MS. RUWART: Maybe that's why its omitted.

6 MR. MICHAELS: To render a decision by the end  
7 of the year.

8 MR. THOMPSON: As you realize, Peter, working  
9 through -- and sometimes it might take us a year after an  
10 audit is issued to resolve all the issues with the audit,  
11 and that's why a longer period of time is allowed.

12 MR. MICHAELS: Of course. I'm fine with it, I  
13 just think it should be expressed and clear.

14 MS. RUWART: To whatever extent there is  
15 something applicable to scheduling of hearings on escape  
16 assessments, I will put it in. If there is nothing, I  
17 will also make a statement to that effect. How about  
18 that?

19 MR. MICHAELS: Just some recognition of escape  
20 assessments. But as Ken correctly said, none of the time  
21 compression applied to escapes.

22 MS. RUWART: Correct.

23 MR. MICHAELS: Or fewer do.

24 MS. PELLEGRINI: Any other comments on page 10?  
25 Yes?

1 MS. MANDEL: No, I was stopping for the court  
2 reporter.

3 MS. PELLEGRINI: We are now on page 11, 3162,  
4 Oral Hearings - Distribution of Documents.

5 3163, Consolidation of Petitions into a Single  
6 Hearing, page 11.

7 MR. MICHAELS: Peter Michaels speaking. I've  
8 raised two concerns. This is a common situation,  
9 certainly, especially if there is a parent company that  
10 has a number of properties in the state, typically there  
11 will be common issues raised.

12 But seldom will the appeals even for a  
13 particular taxpayer be absolutely congruent. There are  
14 almost always issues that are unique to a property, and  
15 that a petitioner might have in common with other  
16 properties it owns or that other state assessees own. I  
17 see here that you can opt out of the consolidation, so  
18 maybe that's the answer. But where cases are  
19 consolidated, inevitably there will be common and unique  
20 issues. And so that's a concern I have.

21 And then my second concern is safeguarding  
22 confidential and proprietary information. It's again a  
23 common situation that there will be similarly situated  
24 taxpayers who have the same legal or methodological issue  
25 to present to the Board. And it's essential that if

1 those cases are combined and there's a single write-up by  
2 the Board staff, the Appeals Division, whomever, that  
3 none of the confidences of one taxpayer be disclosed to  
4 another taxpayer. And I don't see any safeguards here.

5 MS. RUWART: Okay, very good. We'll take that  
6 into account and address those.

7 MS. PELLEGRINI: We are now on page 12. 3164,  
8 Oral Hearing Procedures.

9 MR. MICHAELS: Peter Michaels speaking. I've  
10 made this point in the transmittal letter that I wrote,  
11 and it's a very important point to me. And there is case  
12 law that I believe squarely addresses this concern. And  
13 it's case law where the State Board of Equalization lost,  
14 or where its contentions -- its arguments were rejected  
15 by the court of appeal. That's the GATX case from 1989.

16 We really very, very strongly believe that state  
17 Board hearings must be closed to the public where  
18 confidential and proprietary taxpayer business affairs  
19 and trade secret information or data is introduced. And  
20 it is a standard practice before local boards of  
21 equalization to ask the public, the press, everyone  
22 leaves the room, but the parties and the lawyers for the  
23 parties if there is confidential or proprietary  
24 taxpayer-specific information that is being introduced  
25 and discussed. And it is a longstanding practice before

1 local boards of equalization.

2 There's a court case that supports our request  
3 here that the same practice be applied to state  
4 assessees. I can think of no good reason, legal,  
5 practical, administrative or other, why the same practice  
6 that's recognized locally and that the courts have ruled  
7 on is not honored by the state Board of Equalization.

8 MR. DOERR: Dave Doerr of Cal Tax. Our members  
9 are very concerned about the same issue about protecting  
10 their proprietary and confidential information.

11 MR. KAMP: Okay, Peter, you said the courts have  
12 ruled. You first mentioned the GATX case.

13 MR. MICHAELS: Singular, "court."

14 MR. KAMP: Well, that -- you said -- or are  
15 there any other published court decisions you're aware of  
16 that you're relying on besides GATX?

17 MR. MICHAELS: No.

18 MR. KAMP: Okay. Second --

19 MR. MICHAELS: I only need one.

20 MR. KAMP: I would put out, one, GATX involved  
21 private railroad cars. Second, there is a statute in the  
22 property -- the state assessment provisions of the  
23 Revenue and Tax Code, I think it's 833, but I'm not sure,  
24 that specifically says state assessee hearings must be  
25 open to the public.

1 MS. RUWART: 743.

2 MR. KAMP: 743, okay, that's it. That ought to  
3 be cited, because that's the basis for what you're doing.  
4 And also Proposition 59 says that every hearing is  
5 presumptively open to the public. So I think you have to  
6 have something more than just a blanket statement that  
7 you can close public hearings; there's got to be  
8 standards. And I think this is something you might want  
9 to take up at the December interested parties meeting.

10 MR. MICHAELS: Okay.

11 MR. KAMP: Yeah.

12 MR. MICHAELS: Of course I don't agree with much  
13 of what you said, but I hear what you're saying.

14 MS. MANDEL: And I think what was pointed out at  
15 one of the other meetings was that the trade secrets  
16 provision may be in the local property tax statutes and  
17 not in the state assessment statutes, which if you're  
18 looking at possible legislative proposals, you might look  
19 at.

20 MR. MICHAELS: Well, those very words, I just  
21 cribbed the words from the GATX case.

22 MS. MANDEL: I know. But --

23 MR. MICHAELS: And they are state assessments.

24 MS. RUWART: That was a different statute is the  
25 difference.

1 MS. MANDEL: One of the meetings that maybe you  
2 were at here where disclosure issues came up, I remember  
3 legal staff -- or maybe it was legal staff on the phone  
4 to me -- talking about the statutory provisions in  
5 private railroad cars, the statutory provisions in local  
6 assessment, you know the 1600s, and what is or is not in  
7 the provisions for state assessment.

8 Now, you know, I had this fight with the state  
9 Board a long time ago after GATX. But that was one of  
10 the things that staff was looking at now, and it does  
11 seem a real disconnect that somebody's trade secrets,  
12 business proprietary information, that they would have to  
13 choose between not introducing the evidence that would  
14 assist them in getting their value reduced, and if --  
15 because the hearing has to be -- if the hearing has to be  
16 totally open.

17 The only sort of benefit that the state assessee  
18 has on the flip side is the state assessee does have a  
19 trial de novo, but why should they be forced for want of  
20 an ability to introduce evidence that they think would be  
21 of assistance to them, and then potentially losing  
22 because they don't want to reveal that evidence?

23 MR. MICHAELS: You know, let me --

24 MS. MANDEL: But that's what I understand staff  
25 said is that the trade secret stuff, that statutes aren't



1 the same apparently, even though we've ...

2 MR. MICHAELS: Well, the court certainly did not  
3 -- the opinion, the GATX opinion is insensitive to the  
4 private rail car distinction. And so I'm clear, we are  
5 not suggesting that the entire hearing be closed to the  
6 public. We are only saying that as to the introduction  
7 and discussion of proprietary confidential trade secret  
8 information, costs, expenses, margins, only to the extent  
9 that the hearing specifically deals with confidential,  
10 proprietary information would it be closed to the public.

11 MR. KAMP: And I see that your proposed sentence  
12 doesn't include that very important qualifying language.

13 MR. MICHAELS: No, it does: as required by law.

14 MR. KAMP: Well, that's just it. That's not --

15 MR. MICHAELS: It's not required to be shut --  
16 closed to the public by law except if it's confidential  
17 and proprietary information.

18 MS. RUWART: What I would like to do is ask if  
19 there's anybody else who has something to add to the  
20 discussion. But before I do that, to just remind  
21 everybody, I know this is kind of awkward, but the whole  
22 disclosure issue is going to be discussed comprehensively  
23 in December.

24 So what I'd appreciate is that for those who may  
25 or may not have a chance to come in December, you've now

1 heard the major arguments on both sides. If there's  
2 anybody else who has anything just to add, we're not  
3 going to decide anything today, but just for the benefit  
4 of everybody to hear, and then we will then table this  
5 discussion and move it to December when we discuss all  
6 the disclosures, but recognizing then we have to come  
7 back here, depending on what gets determined over there  
8 and fix all this.

9 Yes, Mr. Koch.

10 MR. KOCH: Al Koch. I just wonder -- and I  
11 don't know anything about the statutory background here,  
12 believe me -- whether something could be submitted under  
13 seal and still be in a public hearing.

14 MS. MANDEL: That is what I tried to do and what  
15 we used to do. And then after GATX, the Board wouldn't  
16 take it under seal. And my clients had to reconfigure  
17 what they were submitting so that it wasn't -- so that  
18 they felt okay in submitting it. And of course the big  
19 joke of the whole thing was that Board Proceedings, which  
20 wasn't Debbie, sent all of my client's materials to a  
21 completely different law firm. So that was when we asked  
22 for them back.

23 MR. KOCH: Well, I hope it wasn't a competitor,  
24 anyway.

25 MS. MANDEL: But I don't know whether -- we did

1 have some discussion in one of the earlier meetings, and  
2 it will probably come up again in December about whether  
3 staff has figured something out in terms of just the  
4 documents as opposed the hearing.

5 MR. KOCH: Right.

6 MS. MANDEL: But I have had experience with  
7 closing local assessment appeals board hearings to the  
8 amusement of my clients, competitors, all of whom were  
9 happy to leave the room because they said they knew all  
10 the information anyway.

11 MS. RUWART: Those of you who are interested in  
12 further discussing this issue, the relevant provisions in  
13 terms of the proposed rules, are found in Part 5, General  
14 Board Hearing Procedures.

15 The staff has actually drafted two alternatives  
16 for proposed Rule 5033, et seq. essentially at the end of  
17 Part 5. Alternative 1 codifies existing Board practices.  
18 Alternative 2 provides for more and earlier disclosure of  
19 documents and information, but it also provides a  
20 mechanism for taxpayers, including state assessees,  
21 petitioners, to request that the Board keep confidential  
22 certain information that may be harmful to the taxpayer.  
23 That is not existing practice. It is open for  
24 discussion, and I encourage all of you who have input on  
25 this way of the Board conducting its hearings to weigh in

1 on proposed Rule 5033, each alternative. And it will be  
2 discussed at the December meeting.

3 MR. MICHAELS: Could I -- I respect and  
4 understand that. It seemed like mushing the state  
5 assessees in with everybody else, some of this is going  
6 to get lost, I'm afraid, on the 14th. And we're done for  
7 now, I appreciate that.

8 But there are, I think -- you know, the Board of  
9 Equalization is the assessor and the adjudicatory board  
10 for state assessees. And it has a very different role in  
11 reviewing and deciding cases under other tax programs.

12 And there may be singular requirements, there  
13 may well be singular circumstances for state assessees  
14 that don't apply to all those other programs because the  
15 Board is the assessor and because the Board is  
16 administratively reviewing its own assessment. So I'm  
17 afraid we might get lost in the mall on the 14th.

18 MS. RUWART: I would hope that that would not  
19 happen. We are all going to be running the meeting, so  
20 if you feel like it's getting run over, we will work with  
21 that. What I might add as just a point of clarification  
22 is that the Board's three major tax program functions, as  
23 a reviewer of decisions from the Franchise Tax Board, as  
24 the adjudicator of audited assessments in the Business  
25 Tax side of --

1 MS. MANDEL: Administrator of the tax.

2 MS. RUWART: As administrator of the tax and the  
3 assessor of state assessees, those are all different  
4 functions to some degree. We recognize that the reason  
5 why we put disclosure as a single topic is because there  
6 are many commonalities as well as distinct differences.  
7 And given the short time frame in which we are doing  
8 this, this was, we thought, the best way to capture the  
9 commonalities and -- but magnifying the distinctions as  
10 well.

11 MR. MICHAELS: Thank you.

12 MS. RUWART: You're welcome. Anything else on  
13 3164?

14 MS. PELLEGRINI: We then move to 3170, Waiver of  
15 Oral Hearing.

16 Seeing no comments, we move to 3171, Oral  
17 Hearing Waived - Unresolved Issues.

18 MR. MICHAELS: Peter Michaels speaking. This  
19 provision contemplates a brief by the Valuation Division  
20 and a brief by the Appeals Division. But in waiving a  
21 hearing, a petitioner is not conceding defeat, and yet  
22 the petitioner is afforded no opportunity to reply to the  
23 Valuation Division's brief.

24 The petitioner may have all kinds of reasons for  
25 opting not to appear before the Board, but shouldn't be

1 foreclosed from refuting or responding to whatever  
2 position the staff has taken.

3 MS. RUWART: Let me review -- offline I'd like  
4 to review this section, because if it's unresolved  
5 issues, my understanding is it should follow the same  
6 procedures as for oral hearings. There may have been an  
7 error of resolved issues. Let me take a look at that and  
8 make sure. Because if it's unresolved, my understanding  
9 is that we allow the same back and forth to go. So I  
10 will take a look at that.

11 MR. MICHAELS: Thank you.

12 MS. PELLEGRINI: Any other comments on page 12?  
13 Moving to page 13, 3180, Withdrawal of a  
14 Petition.

15 MS. MANDEL: Oh, Peter, there is a statutory  
16 basis for (a) and (b). I don't remember what it is.

17 MR. MICHAELS: Okay.

18 MS. RUWART: I have it as Revenue Taxation Code  
19 744(a) and 11341. And it's in our existing Rules of  
20 Practice as well.

21 MR. MICHAELS: I was just lazy, I didn't ...

22 MS. RUWART: The answer is yes, there is a  
23 statutory basis.

24 MS. PELLEGRINI: Section 3190, Notice of Board  
25 Decisions; Findings; Transcripts.

1           We are now on Article 2, the Review of  
2           Assessment of Publicly-Owned Property.

3           MS. RUWART: Otherwise known as Section 11.

4           MS. PELLEGRINI: 3200, Application of Article.  
5           Page 14, 3210, Definitions? 3220, Time of  
6           Filing? Yes.

7           MR. RUBIN: I know it's statutory --

8           MS. PELLEGRINI: Name, please?

9           MR. RUBIN: Oh, I'm sorry. Bob Rubin.

10           I know it's statutory, but this having it filed  
11           by the third Monday of July is the most Draconian statute  
12           of limitations that exists as far as I know. And I mean  
13           it could be 15 days if July 1st is a Monday.

14           MS. MANDEL: It is the statute, and it's -- the  
15           statute used to be the same for state assessment, and  
16           then they made the state assessment an actual day. And I  
17           guess they didn't do the same thing on the Section 11  
18           properties. I remember having to figure out when the  
19           heck it was all the time.

20           MR. RUBIN: I mean, it would be nice if  
21           legislatively something could be done. You talk about  
22           obsessing ...

23           MS. PELLEGRINI: Comment noted. Thank you.  
24           Anything else on page 14?

25           We're on page 15, 3230, content of the

1 application. Yes.

2 MR. RUBIN: "(b) Be authorized by the governing  
3 body ...." What do you envision there? For example --

4 MS. MANDEL: I don't remember what I had.

5 MR. RUBIN: I mean, let's say it's a joint  
6 powers agency. And perhaps the general counsel has been  
7 delegated authority to do this, to file an application.  
8 I mean, what are you looking for? A statement in the  
9 application?

10 MS. RUWART: We can see if it makes any sense to  
11 add more detail.

12 MS. MANDEL: I remember having to get something  
13 from the cities, but I don't remember what.

14 MR. RUBIN: Well, let's say you really want a  
15 resolution of the city councils, of the members of the  
16 JPA, and you've got to get that done by July 15th, it's  
17 not going to happen. I mean, perhaps it would be  
18 sufficient if there was a representation on the  
19 application that it was authorized.

20 MS. RUWART: We'll look into that. I'm sure  
21 there are procedures for that, and we've certainly gone  
22 through it a few times. So if it makes sense to put more  
23 details in there, that would be -- then we will do so.

24 MR. RUBIN: I mean, no one has ever -- I mean,  
25 we've always made that representation in the application,



1 and no one has asked us to prove it, but --

2 MS. RUWART: And maybe that's all that is --

3 MR. RUBIN: -- we have always been prepared to  
4 do so.

5 MS. RUWART: That's okay. That's all we are  
6 trying to do here is clarify so people don't have to ask.

7 MS. PELLEGRINI: Section 3240, Submission of  
8 Application.

9 MR. LEBEAU: Mike Lebeau, Board's Legal  
10 Department. The address, should it be the same as the  
11 3131? Just minor formatting differences.

12 MS. RUWART: Yes. One of the things that I'm  
13 hoping we're going to do at the very end of all this is  
14 across all the sections, conform the Board Procedures  
15 address. We actually cleaned it up a lot from what it  
16 was. There was a lot more variation before we undertook  
17 this process.

18 MR. DOERR: At least they don't have to send 10  
19 copies.

20 MS. PELLEGRINI: The end of page 15, any  
21 comments on page 15, including Section 3250, Answer to  
22 Application? And that section continues on page 16.

23 Section 3260, Prehearing Conference on page 16.

24 Moving to page 17. 3270, Hearing.

25 MR. LEBEAU: Mike Lebeau, Board's Legal

1 Department. Going back to 3260 if we could, is it an  
2 Appeals Division attorney?

3 MS. RUWART: Subdivision (c).

4 MR. LEBEAU: That's what I mean; is it an  
5 Appeals Division attorney?

6 MS. RUWART: Yes. Yes, I see what you're  
7 saying, Division.

8 MS. MANDEL: In (d) as well.

9 MS. RUWART: Yep.

10 MR. MICHAELS: Or not.

11 MR. LEBEAU: The reason I'm asking is last time  
12 it was -- the last appeal of this nature I remember was  
13 the East Bay SMUD case.

14 MS. RUWART: What I've done is update this to  
15 conform to the directive of the Board that an Appeals  
16 Division attorney prepare a summary, and it seemed  
17 sensible to put in a conference.

18 MR. LEBEAU: Okay, a conference was required  
19 before anyway, as I remember that.

20 MS. RUWART: Yes. And we discussed it  
21 internally and decided.

22 MR. LEBEAU: Okay, sorry.

23 MS. RUWART: Okay, it's fine.

24 MR. RUBIN: Bob Rubin. Since there are no  
25 provisions on briefing for Section 11 property, that

1 means that the normal briefing procedures in Part 5 would  
2 apply. But I'm not sure that it's exactly congruous,  
3 because I think in Part 5 --

4 MS. RUWART: Why don't I check that. I see that  
5 there is not a section in here specifically about  
6 briefing, and --

7 MS. MANDEL: That may be because it may be the  
8 application and the answer.

9 MS. RUWART: Yes.

10 MS. MANDEL: I don't know. Do we do other  
11 briefing than the application and the answer?

12 MS. RUWART: Well, that's true. Yeah, it's 3240  
13 and 3250, there's an application and an answer. And then  
14 maybe that's so Part 5 would not apply; it's just the  
15 application and the answer.

16 MS. MANDEL: Does the -- I don't -- I don't  
17 remember if we replied. Do you reply to the answer?

18 MS. RUWART: Maybe Michael knows?

19 MR. LEBEAU: It's three years ago.

20 MS. MANDEL: I don't remember.

21 MR. RUBIN: Well, the petition, or it's an  
22 application, or whatever it is --

23 MS. MANDEL: Right.

24 MR. RUBIN: The applications that I file  
25 generally speaking haven't addressed valuation issues,

1 which could arise in a Section 11 case, depending upon --

2 MR. MICHAELS: We've had them.

3 MR. RUBIN: -- what the Phillips factor was and  
4 so forth.

5 MS. RUWART: Let me look into that. What you're  
6 saying is that the application may not be enough.

7 MR. RUBIN: I guaranty you it won't be.

8 MS. RUWART: And we may provide specific  
9 briefing provisions as briefing is probably necessary in  
10 your view, and therefore is it Part 5 general briefing,  
11 or should we make specific briefing provisions in here is  
12 what I'm going to look at.

13 MS. MANDEL: Right, because I remember --  
14 actually, I probably still have them upstairs in the  
15 Controller's old files, briefing, and that included  
16 evidence before the hearing. Because again, you don't  
17 have that December 31 deadline. You file your  
18 application, and there's an answer, and -- because I  
19 don't think I had your declaration when I filed the  
20 application. That came up later.

21 MR. THOMPSON: Well, that crazy thing, that  
22 was bifurcated with different attorneys. But we had a  
23 full --

24 MS. MANDEL: Well, because I took a new job.

25 MR. THOMPSON: We had a full reply brief thing,

1 and you got on one side and then you got on the other  
2 side, was that the deal? Anyway, but so we've been  
3 following it, whether it was in the rule or not.

4 MR. MICHAELS: Yeah.

5 MS. MANDEL: Right.

6 MR. MICHAELS: We had a case also where it was  
7 the normal exchange of briefs and responses, and whether  
8 it was institutional practice or we got lucky, I don't  
9 know.

10 MS. PELLEGRINI: Carole will --

11 MS. RUWART: We'll look at that.

12 MS. PELLEGRINI: -- look at that and add some  
13 things. So that concludes -- are there any other  
14 comments on page 16?

15 We're on page 17. We were on 3270, Hearing.

16 MR. RUBIN: I just note that there can be trade  
17 secret issues arising in these types of cases, too.

18 MS. PELLEGRINI: So we'll note confidentiality  
19 disclosure issues as noted before to be addressed.

20 3280, Board Appraised Property.

21 MR. MICHAELS: Is it "appraised?" Is that the  
22 right word?

23 MS. MANDEL: Yes, I think it -- sometimes there  
24 may be property -- I didn't have it in mine, but ...

25 MS. RUWART: This is in the language of existing

1 -- this is Carole Ruwart. 3280 is existing regulation  
2 language, so somebody decided it was the right words,  
3 right?

4 MR. DOERR: What property would the Board  
5 appraise under Section 11?

6 MS. MANDEL: Ken, do you know?

7 MR. THOMPSON: Well, we have state-assessed  
8 property subject to Section 11; that's what it comes  
9 right down to.

10 MS. MANDEL: There are state-assessed properties  
11 subject to Section 11, is what he says.

12 MR. THOMPSON: SMUD, for instance, is a state  
13 assessee, because it owns a pipeline. And we assess it  
14 every other time in Sacramento.

15 MR. DOERR: So all of SMUD's property outside  
16 this district is appraised by the state?

17 MR. THOMPSON: If it's a gas transmission  
18 pipeline it is.

19 MR. DOERR: How about the electricity part?

20 MR. THOMPSON: Nope. That wouldn't be; it has  
21 to be a pipeline that crosses county lines for us to have  
22 assessment jurisdiction.

23 MS. PELLEGRINI: Any comments on this section,  
24 any others? Then 3290, Notice of Board Decision, which  
25 actually continued on page 18.

1           Okay, we are now at noon. We have eight more --  
2           nine more pages to go. I know the court reporter needs a  
3           break. So we will reconvene at 1 o'clock.

4           MR. SHAH: Debbie, this is Neil; one more  
5           request. I think we have 13 pages --

6           MS. PELLEGRINI: Sorry.

7           MR. SHAH: -- in the e-mail. Is there more that  
8           can be sent to us?

9           MS. PELLEGRINI: That was it.

10          MS. RUWART: That was the extent of Mr.  
11          Michaels' comments.

12          MR. SHAH: Oh, that's right, okay. If we could  
13          get the rest, that would be great.

14          MS. RUWART: Okay. Well, he didn't give us the  
15          benefit of commenting on the rest of the provisions.

16          MR. SHAH: Peter is so efficient.

17          MS. PELLEGRINI: We will be turning off the  
18          phone and then calling back about five minutes to 1, so  
19          you'll need to call back in. Thank you.

20          (A luncheon recess was taken.)

21          MS. PELLEGRINI: This is Debbie Pellegrini, and  
22          we are reconvening our interested parties meeting on Part  
23          3 on the Property Tax. And we are on page 18, Article 3,  
24          Property Tax Welfare Exemption Claim Review Procedures.  
25          And we will continue with the process we were using this

1 morning. We are on 3300, Application of Article. Any  
2 comments?

3 On that same page, 3310, Definitions?

4 MR. HUDSON: Why do we do it like that? I'm  
5 just curious.

6 MS. PELLEGRINI: Please identify yourself.

7 MR. HUDSON: Okay, Tom Hudson, Bill Leonard's  
8 office. I'm just curious why we have it structured this  
9 way where each time we say the definitions are the same  
10 as they are somewhere else, and then we list all the  
11 things that are the same like that.

12 MS. RUWART: This is Carole Ruwart. That was my  
13 choice in preparing this draft for two reasons. One was  
14 that I wanted to make each section self-supporting.

15 The second is that I knew that at the same time  
16 we were drafting this section, Part 5 was being  
17 redrafted, and I wanted us to be able to make sure we  
18 followed through at the very end to be able to check off  
19 at the very end that whatever we determined the  
20 definitions were in each of the individual sections, they  
21 would then be matched at Part 5 at the very end.

22 It may well be that we would delete this part  
23 and just reference the Board hearing procedures at the  
24 very end. But for completeness, it just seemed to be a  
25 useful tool, and it also points out -- it also gave the



1 opportunity to add additional definitions as applied to  
2 each subdivision and not clog up the Board hearing  
3 procedures with those other definitions. So if you think  
4 that in the final product it should look a little bit  
5 different, I'd appreciate the comment.

6 MR. HUDSON: Okay.

7 MS. PELLEGRINI: Can those who have just joined  
8 us on the telephone please identify yourselves?

9 MS. CROCETTE: Sabina Crocette from Betty Yee's  
10 office.

11 MR. SMITH: Chris Smith from Betty Yee's office.

12 MS. PELLEGRINI: Thank you.

13 MR. HERD: Jim Herd also from Betty Yee's  
14 office.

15 MS. PELLEGRINI: Thank you. We are now then on  
16 page 19, which would be 3320, Time for Filing of  
17 Petitions, and 3330, Contents of the Petition.

18 3331, Submission of Petition. And we will note  
19 the change noted before to keep the address the same  
20 throughout.

21 3332 on page 20, which is Timeliness of  
22 Petition. 3340, Prehearing Conference. 3350, Waiver of  
23 Oral Hearing. And then 33- -- who has just joined us?

24 MR. SHAH: Neil Shah with Mr. Parrish.

25 MS. PELLEGRINI: Thank you, Neil. We are on

1 page 20, 3360, Briefs, and that continues on page 21.

2 Name, please?

3 MR. RUBIN: Bob Rubin. Again, the petitioner  
4 has 15 days to file a reply brief, and sometimes that's  
5 not going to be enough time. Thirty days would seem  
6 reasonable and consistent with the FTB appeal procedures.

7 MS. RUWART: Okay.

8 MR. KOCH: Al Koch. It is intended that the  
9 petition be a brief?

10 MS. RUWART: Can anybody from the Welfare  
11 Exemption unit answer the question?

12 MS. THOMPSON: The brief is not the petition  
13 itself.

14 MS. RUWART: Is somebody typing on the phone?  
15 Thanks.

16 MS. THOMPSON: The petition itself, my  
17 understanding is, is from the claimants. The brief is  
18 actually from our staff.

19 MR. KOCH: Yeah. But isn't it normal for the  
20 petitioner to file an opening brief?

21 MR. THOMPSON: No.

22 MS. THOMPSON: No.

23 MR. THOMPSON: In all of our programs -- this is  
24 Ken Thompson. In all of our programs, the requirements  
25 for the petition are laid out, and they are not to the